

Notice of Allowability

Application No.

10/810,404

Examiner

Robert Shiao, Ph. D.

Applicant(s)

PUTZIG, DONALD E.

Art Unit

1626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed on May 26, 2006.
2. ☒ The allowed claim(s) is/are 1, 3-4, 6-10, and 12-14, now are 1-11.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 08/04/05, 3/26/04
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date _____.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

DETAILED ACTION

1. Amendment of claims 1, 3-4, 6-10, and 12-14, and cancellation of claims 2,5,11, 15-27, 31, and 37 in the amendment filed on May 26, 2006, is acknowledged. Claims 1, 3-4, 6-10, 12-14, 28-30, 32-36 and 38-40 are pending in the application.

Information Disclosure Statement

2. Applicant's Information Disclosure Statements, filed on August 04, 2005 and March 26, 2004, have been considered. Please refer to Applicant's copies of the 1449's submitted herein.

Responses to Election/Restriction

3. Applicant's election with traverse of Group I, claims 1-22 (i.e., now are 1, 3-4, 6-10 and 12-14), in the reply filed on May 26, 2006, is acknowledged. The traversal is on the ground(s) that applicants respectfully asserts a serious burden has not been imposed on the Examiner to perform a complete search of the defined area, i.e., Groups I and III. This is not found persuasive and reasons are given, *infra*.

Claims 1, 3-4, 6-10, 12-14, 28-30, 32-36 and 38-40 are pending in the application. The scope of the invention of the elected subject matter is as follows.

Claims 1, 3-4, 6-10, and 12-14 are drawn to compositions of the formula of claim 1.

Each of Groups I-III is distinct and independent products compositions and various processes of making, because starting materials, catalyst, solvent, and reaction conditions of each group differ in elements, bonding arrangement and chemical

property to such an extent that a reference anticipating processes of making of any one group would not render another group obvious. It is noted that the instant restriction requirement is prosecuted under 35 U.S.C. 121, wherein each Group is a set of patentably distinct inventions of a broad statutory category (e.g. Compounds, Methods of Use, Methods of Making, etc.). Moreover, the examiner must perform a commercial database search on the subject matter of each group in addition to a paper search, which is quite burdensome to the examiner.

The requirement is still deemed proper and is therefore made **FINAL**.

EXAMINER'S AMENDMENT

4. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee. Authorization for this examiner's amendment was given in a telephone interview with Kathryn M. Sanchez on July 18, 2006. The application has been amended as follows:

Delete claims **28-30, 32-36 and 38-40**

Reasons for Allowance

5. The following is an examiner's statement of reasons for allowance:

Claims 1, 3-4, 6-10, and 12-14 are neither anticipated nor rendered obvious over the art of record, and therefore are allowable. This invention relates to alkoxylated

phosphite ester and process therefor. The closest reference is Duan et al. US 6,541,598, which discloses composition comprising titanium and process therewith. The difference between reference and instant claims is that instant claimed compositions have not been found. A suggestion for modification of above reference to obtain the instant claimed compositions has not been found. Claims 1, 3-4, 6-10, and 12-14 are allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Shiao whose telephone number is (571) 272-0707. The examiner can normally be reached on 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on (571) 272-0699. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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RS.
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July 18, 2006